

ACTION

OLL 85-0501

Office of Legislative Liaison
Routing Slip

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TO:	ACTION	INFO
1. D/OLL		x
3. DD/OLL		x
3. Admin Officer		
4. Liaison		
5. Legislation	✓	x
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SUSPENSE

17 Feb 85

Action Officer:

Remarks:

17 Feb 85

Name/Date

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U.S. HOUSE OF REPRESENTATIVES
PERMANENT SELECT
COMMITTEE ON INTELLIGENCE
WASHINGTON, D.C. 20515

February 11, 1985

LEGISLATIVE LIAISON
95-0501

Chief, Legislation Division
Office of Legislative Liaison
Central Intelligence Agency
Washington, D.C. 20505

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Dear

The enclosed outline may be of interest to whomever
in your Division is going to be handling the arms
transfer issue.

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Sincerely,

David

David S. Addington

**AMERICAN LAW INSTITUTE - AMERICAN BAR ASSOCIATION
Committee on Continuing Professional Education**

October 20, 1984

Developments in Foreign Military Sales

Jerome H. Silber, General Counsel, Defense Security
Assistance Agency, U.S. Department of Defense

I. Legislative Framework of Security Assistance

A. Origin and Development

1. Neutrality Act of 1939 (direct sales)
Lend-Lease Act (WWII) (Government exports)
2. China Aid Act, Greece-Turkey Aid Act
(1947 Truman Doctrine)
3. Mutual Defense Assistance Act of 1949,
Mutual Security Act of 1954 (Government
& direct export licensing)
4. Foreign Assistance Act of 1961 (FAA)
(grants & sales authorities)
5. Foreign Military Sales Act (sales authority
enacted in 1968; renamed in 1976 as Arms
Export Control Act (AECA))

B. Program Objectives of Security Assistance

1. Section 1 AECA (sales) & section 501 FAA
(grants) Policies
2. Section 4 AECA (sales); section 502 FAA
(grant material & services); section 543
FAA (grant training)

C. Governmental Organization of Sales

1. Program policies
 - a. Presidential authority and direction
(delegations in E.O. 11958
(Jan. 18, 1977))

- b. State Department control of program
(section 2 AECA)
 - c. DoD control of execution
(section 42(d) AECA)
- 2. Congressional control & oversight
 - a. Budget (section 31 AECA) & Reprogramming
(section 523 Foreign Aid appropriations)
 - b. Prior notice of Major Sales
(section 36(b) AECA); little effect of
Chadha decision (103 S.Ct. 2764 (1983))
- D. Authority to Make Sales
 - 1. Government sales from DoD stocks & services
(section 21(a) AECA)
 - 2. Government sales from new procurement
(section 22(a) AECA)
 - 3. Foreign military construction sales
(section 29 AECA)
 - 4. Government sales of GFE items to contractors
(section 30 AECA)
- E. Authority to Finance Sales (FMS & direct
commercial)
 - 1. Government "direct credits" (section 23
AECA); concessional & "forgiven" loans
 - 2. Military Assistance (MAP) grants - FMS only
(section 503(a)(3) FAA)
 - 3. Government guaranties of Federal Financing
Bank loans (section 24(a) AECA)
- F. Emergency Authorities
 - 1. Sales from stock (section 21(d) AECA)
 - 2. Sales from new procurement
(section 22(b) AECA)

3. Waiver of Congressional review
(section 36(b) AECA)

G. Foreign Procurement for FMS

1. Domestic procurement preferred
(section 42(a) AECA)
2. Offshore Procurement using AECA financing
 - a. Coproduction (section 42(b) AECA)
 - b. FMS & commercial sales; "offsets"
(section 42(c) AECA)

H. FMS surcharges

1. Administrative surcharge
(section 21(e) (1) (A) AECA)
2. Asset Use surcharge
(section 21(e) (1) (B) AECA)
3. Nonrecurring Cost surcharge
(section 21(e) (1) (C) AECA)

I. Special Defense Acquisition Fund (SDAF)

1. Buy "in anticipation of" foreign transfers
(section 51(a) AECA)
2. Sources of funds (section 51(b) AECA)
3. Limits
 - a. Capitalization size (10 USC 138(g);
(section 51(c) (1) AECA)
 - b. Annual obligation authority
(section 51(c) (2) AECA)

II. Contractual Implementation of Government Sales

- A. Federal Electric and General Electric cases
(727 F.2d. 1567 (1984))
- B. Applicability of FAR & DoD FAR Supplement
(Subpart 25.73)

- C. Pricing deviations from DoD's own procurement prices
- D. Competitive & sole-source procurements
- E. Agents' fees & commissions (section 39 AECA)
- F. Contractor warranties
- G. Contractor & subcontractor product liability